

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20240

January 19, 2001

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Instruction Memorandum No. 2001-076
Expires: 09/30/2002

To: All State Directors

From: Assistant Director, Minerals, Realty and Resource Protection

Subject: Solicitor's Opinion Regarding Legal Limitation on Millsite Acreage in Plans of Operations

PROGRAM AREAS: Mining Law Administration, Surface Management Land and Realty, Land Use Authorizations.

ISSUE: How should the Bureau of Land Management (BLM) apply the Solicitor's Opinion regarding the legal limitation on millsite acreage to plans of operations?

BACKGROUND: This Instruction Memorandum (IM) re-issues the guidelines contained in the now expired Washington Office (WO) IM 98-154. The policies contained in the expired memorandum are not changed by this instruction memorandum. On November 7, 1997, the Solicitor issued a legal opinion entitled Limitations on Patenting Millsites under the Mining Law of 1872, M-36988. The Secretary concurred in the opinion on November 12, 1997. A copy of the Opinion has been sent to you as an attachment to WO IM 98-74.

In the opinion, the Solicitor cautions the BLM not to "approve plans of operations which rely on a greater number of millsites than the number of associated claims being developed unless the use of additional lands is obtained through other means." In other words, the millsite acreage included in a plan of operations should not exceed five acres of millsite lands for each associated lode or placer claim within the plan area. The opinion states further that there are "at least two other ways that mining operators can gain the use of federal lands for millsite purposes," either "by exchange under § 206 of the Federal Land Policy and Management Act (FLPMA), and by permits and leases under Title III of FLPMA." Section 206 authorizes the Secretary to exchange tracts of public land for interests in land of equal value elsewhere when "the public interest will be well served by making that exchange." 43 U.S.C. § 1716(a). Under section 302(b), the Secretary may issue permits for the "use, occupancy and development of the public lands" for various purposes. 43 U.S.C. § 1732(b). We have had further discussions with the Solicitor's Office on the options available to us and will implement the following policy.

POLICY/ACTION: The BLM may continue to use 43 C.F.R. Part 3809 to authorize all pending and future mining operations which rely on millsite acreage in the manner described below:

Lands Withdrawn from the Operation of the Mining Law: If lands on which the plan is proposed are withdrawn from the operation of the Mining Law, you should not approve proposed plans of operations which rely on millsite acreage which is in excess of the legal limit of five acres per associated lode or placer claim within the plan area.

You must not approve the plan until the claimant relinquishes the excess millsite acreage and submits a plan which uses the correct millsite acreage. The claimant should work with the BLM to choose which millsites it will relinquish. If the claimant refuses to relinquish the excess millsite acreage, you must contest those millsites. You should use your best judgment in deciding which millsite acreage to contest by considering the proposed and actual uses and the claimant's compliance with all other requirements under the Mining Law for the millsite acreage. Contest excess millsites using the following charge in the contest complaint:

The (name of millsites and BLM serial numbers) are invalid because they are in excess of the millsite acreage allowed by the Mining Law (30 U.S.C. 42 and R.S. §2337) for the associated mining claims.

Lands Open to the Operation of the Mining Law: If the lands on which the mining plan of operation is proposed are open to the operation of the Mining Law and you determine that the plan does not unacceptably conflict with other significant resources within the plan area, e.g., cultural sites or properties or sacred sites, you need not evaluate the millsite-acreage to mining claim ratio involved in the plan. When you approve a plan of operations under 43 CFR § 3809.1-6, the approval, in effect, serves as a surface use permit under section 302(b) of the FLPMA, as well as authorization under the Mining Law. To the extent the plan does not unacceptably conflict with other resources within the plan area, your plan approval under 3809 serves as a permit to use even those lands on which millsites are located in excess of the acreage limitation in the Mining Law.

If the lands on which the plan is proposed are open to the operation of the Mining Law but you determine that the operator's proposed plan would cause unacceptable resource conflicts, you must evaluate the mill-site-acreage-to-mining-claim ratio involved in the plan. By doing so, you will be able to exercise greater discretion to protect other resources by negotiating with the operator regarding the uses within the plan area for millsite purposes.

To exercise this discretion, determine the amount of millsite acreage which is in excess of that allowed by the Mining Law. Then, inform the operator of the millsite acreage limitation and ask the operator to amend the proposed plan of operations by moving proposed surface uses away from the excess millsite acreage which covers the resource conflict areas. If the operator agrees to remove proposed surface uses from the resource conflict areas, it should amend the plan of operations to exclude the excess millsite acreage which covers the conflict areas from the boundaries of the plan area before you decide whether to approve the plan.

If the operator refuses to remove proposed surface uses from the resource conflict areas, you should contest the excess millsites, using your best judgment in deciding which millsite acreage

to contest by considering the resource conflict areas, the proposed and actual uses of the millsite acreage and the claimant's compliance with all other requirements under the Mining Law for the millsite acreage. Contest excess millsites using the charge described above.

In all cases, your plan approvals must state expressly that the approval does not warrant the validity of the mining claims or millsites within the plan area. Include the following statement in each plan of operation: "BLM's approval of this plan of operations does not imply or otherwise serve as a recognition of the validity of any mining claim or millsite to which it may apply."

TIME FRAME: This IM is effective immediately upon its receipt in your office.

BUDGET IMPACTS: None.

MANUAL SECTIONS AFFECTED: Manual Section 3809.

COORDINATION: If particular plans of operations present questions not addressed here, please contact the Washington Office (WO 320).

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Signed by:
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Authenticated by:
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